

Introduction

MEMORANDUM

July 11, 2011

TO: County Council

FROM: Amanda Mihill, Legislative Analyst *A. Mihill*
Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 25-11, Offenses – Curfew – Established

Expedited Bill 25-11, Offenses – Curfew – Established, sponsored by the Council President at the Request of the County Executive is scheduled to be introduced on July 12, 2011. A public hearing and action is tentatively scheduled for July 26, 2011 at 1:30 p.m.

Bill 25-11 would establish a curfew for minors; make certain findings; prohibit certain activities during the curfew; provide for certain defenses; establish enforcement procedures and penalties; and generally amend County law relating to offenses and curfews.

According to the County Executive's transmittal memorandum, Bill 25-11 is intended to address issues relating to increased gang activity, violence, and crime involving minors in the County. The Executive notes that Bill 25-11 is similar to existing laws in Prince George's County and the District of Columbia.

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Expedited Bill No. 25-11
Concerning: Offenses – Curfew –
Established
Revised: 7/11/2011 Draft No. 1
Introduced: July 12, 2011
Expires: January 12, 2013
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) establish a curfew for minors;
- (2) make certain findings;
- (3) prohibit certain activities during the curfew;
- (4) provide for certain defenses;
- (5) establish enforcement procedures and penalties; and
- (6) generally amend County law relating to offenses and curfews.

By adding

Montgomery County Code
Chapter 32, Offenses – Victim Advocate
Section 32-23A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec 1. Sections 32-23A is added as follows:**

2 **32-23A. Curfew.**

3 **(a) Findings and Purpose.**

4 (1) There has been an increase in juvenile violence, juvenile gang
5 activity, and crime by minors in the County.

6 (2) Minors are particularly susceptible, because of their lack of
7 maturity and experience, to participate in unlawful and gang-
8 related activities and to be the victims of crime.

9 (3) The County is obligated to provide for:

10 (A) the protection of minors from each other and from other
11 persons;

12 (B) the enforcement of parental control over, and
13 responsibility for, children;

14 (C) the protection of the general public; and

15 (D) the reduction of the incidence of juvenile criminal
16 activities.

17 (4) A curfew for minors is in the interest of the public health,
18 safety, and general welfare and will help to attain these
19 objectives and to diminish the impact of unwanted conduct on
20 County residents.

21 (5) A curfew law will protect the welfare of minors by:

22 (A) reducing the likelihood that minors will be the victims of
23 criminal acts during the curfew hours;

24 (B) reducing the likelihood that minors will become involved
25 in criminal acts or exposed to trafficking in controlled
26 substances during the curfew hours; and

27 (C) aiding parents in carrying out their responsibility to

28 exercise reasonable supervision of minors entrusted to their
29 care.

30 **(b) Definitions.**

31 In this Section, the following terms have the meanings indicated:

32 Curfew hours means from 11 p.m. on any Sunday, Monday, Tuesday,
33 Wednesday, or Thursday, until 5 a.m. the following day, and from
34 12:01 a.m. until 5 a.m. on any Saturday or Sunday.

35 Drug trafficking means the act of engaging in any prohibited activity
36 related to controlled dangerous substances as defined in State law.

37 Emergency means an unforeseen combination of circumstances or the
38 resulting state that calls for immediate action. Emergency includes a
39 fire, natural disaster, automobile accident, or any situation that
40 requires immediate action to prevent serious bodily injury or loss of
41 life.

42 Establishment means any privately-owned place of business to which
43 the public is invited, including any place of amusement or
44 entertainment.

45 Minor means any person under 18 years old, but does not include a
46 judicially emancipated minor or a married minor.

47 Operator means any individual, firm, association, partnership, or
48 corporation that operates, manages, or conducts an establishment.

49 Operator includes the members or partners of an association or
50 partnership and the officers of a corporation.

51 Parent means:

52 (1) natural parent;

53 (2) adoptive parent;

54 (3) step-parent;

- 55 (4) any person who has legal custody or is the guardian of a minor
 56 by court order or marriage;
- 57 (5) any person who is at least 21 years old who is authorized by a
 58 natural parent, adoptive parent, step-parent, or custodial parent
 59 of a child to act as a caretaker for the child; or
- 60 (6) a public or private agency with whom a minor has been placed
 61 by a court.

62 Public place means any place to which the public, or a substantial
 63 group of the public, has access. Public place includes any street,
 64 highway, and common area of a school, hospital, apartment house,
 65 office building, transport facility, or shop.

66 Remain means to linger, stay, or fail to leave a public place or
 67 establishment when requested to do so by a police officer or the
 68 owner, operator, or other person in control of the public place or
 69 establishment.

70 Serious bodily injury means bodily injury that creates a substantial
 71 risk of death or that causes death, serious permanent disfigurement, or
 72 protracted loss or impairment of the function of any bodily member or
 73 organ.

74 (c) **Prohibitions.**

75 (1) **Minor.** A minor must not remain in any public place or
 76 establishment in the County during curfew hours.

77 (2) **Parent.** A parent of a minor must not knowingly permit, or by
 78 insufficient control allow, the minor to remain in any public
 79 place or any establishment in the County during curfew hours.

80 The term “knowingly” includes knowledge that a parent should
 81 reasonably be expected to have concerning the location of a

82 minor in that parent's legal custody. This requirement is
 83 intended to hold a neglectful or careless parent to a reasonable
 84 community standard of parental responsibility through an
 85 objective test. It is, therefore, no defense that a parent did not
 86 know of the activities, conduct, or location of the minor.

87 **(3) Owner or Operator.** The owner or operator of an
 88 establishment must not knowingly allow a minor to remain at
 89 an establishment in the County during curfew hours. The term
 90 "knowingly" includes knowledge that an owner or operator
 91 should reasonably be expected to have concerning the patrons
 92 of the establishment. The standard for "knowingly" must be
 93 whether a reasonable person in the position of the owner or
 94 operator should have known that the patron was a minor
 95 committing a curfew violation.

96 **(d) Defenses.**

97 **(1) It is not a violation of this Section if a minor during curfew**
 98 **hours was:**

99 **(A) accompanied by the minor's parent;**

100 **(B) accompanied by an adult authorized by the minor's**
 101 **parent to accompany the minor for a specified period of**
 102 **time and purpose in a specified area;**

103 **(C) on an errand at the direction of the minor's parent,**
 104 **without any detour or stop, until 12:30 a.m.;**

105 **(D) in a motor vehicle, train, or bus in interstate travel**
 106 **through the County or starting or ending in the County;**

107 **(E) engaged in employment, or going to, or returning home**
 108 **from, employment, without any detour or stop. The**

109 minor must carry a valid work permit issued under State
 110 law;

111 (F) responding to an emergency;

112 (G) on the property where the minor resides;

113 (H) on the sidewalk that abuts the minor's residence, or that
 114 abuts the residence of a next-door neighbor if the
 115 neighbor did not complain to the Police Department
 116 about the minor's presence;

117 (I) attending an official school, religious, or other
 118 recreational activity sponsored by the County, a civic
 119 organization, or a similar entity that takes responsibility
 120 for the minor, or going to, or returning home from,
 121 without any detour or stop, an official school, religious,
 122 or other recreational activity supervised by adults and
 123 sponsored by the County, a civic organization, or a
 124 similar entity that takes responsibility for the minor; or

125 (J) exercising First Amendment rights protected by the
 126 United States Constitution.

127 (2) It is not a violation of subsection (c)(3) if the owner or operator
 128 of an establishment promptly notified the Police Department
 129 that a minor was present in the establishment during curfew
 130 hours and refused to leave.

131 (e) **Enforcement procedures.**

132 (1) Before taking any enforcement action under this Section, a
 133 police officer must ask an apparent minor's age and reason for
 134 being in the public place or establishment. The officer must not
 135 issue a citation or make an arrest under this Section unless the

136 officer reasonably believes that:
 137 (A) an offense has occurred; and
 138 (B) based on any response and other circumstances, no
 139 condition in subsection (d) applies.

140 (2) If a police officer finds that a minor is committing a curfew
 141 offense, the police officer must take the minor to the nearest
 142 available Police facility, substation, or other area designated by
 143 the Police Department, and detain the minor until the minor can
 144 be released to the custody of the minor's parent or an adult
 145 acting in loco parentis.

146 (3) The minor's parent or an adult acting in loco parentis with
 147 respect to the minor must be called to the Police facility,
 148 substation or other designated area to take custody of the minor.
 149 A minor who is released to a person acting in loco parentis with
 150 respect to the minor must not be taken into custody for violation
 151 of this Section while returning home with the person acting in
 152 loco parentis. If no person claims responsibility for the minor,
 153 the police may take the minor to the minor's residence or place
 154 the minor in the custody of the Department of Health and
 155 Human Services, who may release the minor at 5 a.m. the next
 156 morning.

157 (f) **Penalties.**

158 (1) Any parent or any owner or operator of an establishment who
 159 violates this Section has committed a separate offense for each
 160 day, or part of a day, during which the violation is committed,
 161 continued, or permitted. Each offense is a Class A violation.

162 (2) The Court may also require one or more parent of a minor, after

163 each conviction for violating this Section to complete parenting
164 classes.

165 (3) A minor found to have violated this Section by the Juvenile
166 Court may be ordered to perform up to 25 hours of community
167 service for each violation.

168 **Sec 2. Expedited Effective Date.**

169 The Council declares that this Act is necessary for the immediate protection
170 of the public interest. This Act takes effect on the date when it becomes law.

171 *Approved:*

172 _____
Valerie Ervin, President, County Council Date

173 *Approved:*

174 _____
Isiah Leggett, County Executive Date

175 *This is a correct copy of Council action.*

176 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 25-11
Offenses – Curfew - Minors

- DESCRIPTION:** This bill imposes a curfew on youth under the age of 18 years from Midnight to 5:00 am on Saturday and Sunday and from 11:00 pm to 5:00 am on the remaining days of the week.
- PROBLEM:** This bill is intended to address issues relating to increased gang activity, violence, and crime involving minors in the County.
- GOALS AND OBJECTIVES:** Youth under the age of 18 are particularly susceptible, because of their lack of maturity and experience, to participate in unlawful and gang-related activities and to be the victim of older perpetrators of crime. Enactment of this bill will protect the welfare of minors by: (1) reducing the likelihood that minors will be the victims of criminal acts during curfew hours; (2) reducing the likelihood that minors will become involved in criminal acts or exposed to criminal acts during curfew hours; and (3) aid parents in carrying out their responsibility to exercise reasonable supervision of minors entrusted to their care. The bill will also protect the general public from juvenile related criminal activity.
- COORDINATION:** Department of Police, Office of the State’s Attorney
- FISCAL IMPACT:**
- ECONOMIC IMPACT:**
- EVALUATION:**
- EXPERIENCE ELSEWHERE:** This bill is similar to laws that currently exist in the District of Columbia and Prince George’s County.
- SOURCE OF INFORMATION:** Police Chief Tom Manger
Assistant Chief Administrative Officer Kathleen Boucher, 240-777-2593
- APPLICATION WITHIN MUNICIPALITIES:** All except Gaithersburg, Garrett Park, Kensington, Laytonsville, Poolesville, Rockville, Somerset, Washington Grove
- PENALTIES:** Class A



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

July 11, 2011

RECEIVED
MONTGOMERY COUNTY
EXECUTIVE OFFICE

JUL 11 11 31 AM

TO: Valerie Ervin, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation Establishing a Curfew for Minors

I am transmitting for Council introduction an expedited bill that creates a curfew for youth under the age of 18 years, as well as a Legislative Request Report for the bill. This bill is similar to curfew laws that already exist in Prince George's County and the District of Columbia.

This bill is intended to address issues relating to increased gang activity, violence, and crime involving minors in the County. It imposes a curfew from Midnight to 5:00 am on Saturday and Sunday and from 11:00 pm to 5:00 am on the remaining days of the week.

Youth under the age of 18 are particularly susceptible, because of their lack of maturity and experience, to participate in unlawful and gang-related activities and to be the victim of older perpetrators of crime. Enactment of this bill will protect the welfare of minors by: (1) reducing the likelihood that minors will be the victims of criminal acts during curfew hours; (2) reducing the likelihood that minors will become involved in criminal acts or exposed to criminal acts during curfew hours; and (3) aid parents in carrying out their responsibility to exercise reasonable supervision of minors entrusted to their care. The bill will also protect the general public from juvenile related criminal activity.

I would greatly appreciate Council's expedited review of this bill. If you have any questions about the bill, please contact Assistant Chief Administrative Officer Kathleen Boucher at 240-777-2593 or Kathleen.boucher@montgmoerycountymd.gov.

Attachment